IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

Bail Appl..No. 4891 of 2007()

CRIME NO.271 OF 2007 OF PARAPPANANGADI POLICE STATION

PETITIONER : ACCUSED

PRAMOD.K.N.,
S/O.CHANDANKUTTY K.N. AGED 34 YEARS,
KOTTAKKALAM HOUSE,
VALLIKUNNU POST,
MALAPPURAM DIST.

BY ADV. SRI.K.P.SUDHEER

RESPONDENTS: COMPLAAINANT

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, REPRESENTING
SUB INSPECTOR OF POLICE
PARAPPANANGADI POLICE STATION,
MALAPPURAM DIST.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4891 of 2007

Dated this the 13th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Section 3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act . Investigation is in progress. The petitioner apprehends imminent arrest.

2. The allegation includes the allegation under Section 3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. In view of the bar under Section 18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, the learned counsel for the petitioner was requested to explain how this application for anticipatory bail is maintainable. The learned counsel for the petitioner submits that the mere inclusion of a section under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act will not invite the bar of Section 18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act . I am in agreement with the learned counsel for the petitioner on that aspect. But the allegations in the F.I.statement clearly show that insulting words referring to the community to which the defacto complainant belongs were uttered by the petitioner in the presence of other members of the public. There

is a contention raised that the incident had taken place in the house of the defacto complainant and therefore it cannot be held to be in public view as to attract Section 3(1)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. The materials presently available indicate that this incident could be seen by members of the public. It is not the law at all that the incident must take place at public place. It is enough if the incident has taken place in public view. Be that as it may, I do not intend to express any final opinion on the disputed facts. Suffice it to say that I find no merit in the contention that the bar of Section 18 shall not be applicable in the facts and circumstances of this case.

3. The learned counsel for the petitioner then submits that there may be a direction to the learned Magistrate to consider the application for bail on merits. The petitioner apprehends that the learned Magistrate may not consider such application on merits as the offence is triable exclusively by a Special/Sessions Court under Section 14.

4. This Court time and again has reiterated that the mere fact that the offence is triable by a Court of Session will not justify the abdication of powers by the Magistrate under Section 437 Cr.P.C. The position has been reiterated in **Ali v. State of Kerala** [2000(2) KLT

280], **Shanu v. State of Kerala** [200(3) KLT 452], **Krishnakumar v. State of Kerala** [2005(1) KLD (Cri.42)] and **P.P.Kader v. State of Kerala** [2005(1) KLD (Cri.250). I have no reason to assume that the learned Magistrate would not consider the petitioner 's application for bail on merits, in accordance with law and expeditiously.

This application is, in these circumstances, dismissed. I may hasten to observe that if the petitioner surrenders and applies for bail, after giving sufficient prior notice to the prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself and that too in the light of the 4 decisions referred above.

(R.BASANT, JUDGE)

rtr/-